No. 82-1215

IN THE

Supreme Court of the United States

OCTOBER, TERM, 1982

FREDERICK PAUL,
Petitioner,
v.
THE UNITED STATES

AND

BARRY JACKSON AND THOMAS FENTON,
Petitioner
v.
THE UNITED STATES

ON PETITION FOR
WRIT OF CERTIORARI TO
THE UNITED STATES COURT
OF APPEALS FOR THE
FEDERAL CIRCUIT

BRIEF OF AMICUS CURIAE OF THE NATIVE VILLAGE OF VENETIE

Native Village of Venetie, Pro Se

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I. THE INTEREST OF AMICUS

The Neets'Ai Gwitch'In Tribe of Athapaskan Indians, reorganized by the United States, January 15, 1940, as the NATIVE VILLAGE OF VENETIE, pursuant to the Indian Reorganization Act, Sections 16 and 17 (48 Stat. 984, as amended by 49 Stat. 1250), as a civilized Tribe holds fee patent and claims a legal right to hold in fee title about 5.5 million acres of land north of the Yukon and Porcupine Rivers in Alaska, which it has occupied from time immemorial and prior to the passage of the Northwest Ordinance, 1 Stat. 50. The USSR, England and the United States recognized by treaty this land as "merely private property" of the Neets'Ai Gwitch'In Tribe.

During the period 1969 through 1971 it was represented by Thomas E. Fenton

and the firm of Jackson and Fenton, even though they and the Tribe were never able to secure a contract approved by the Secretary of Interior because the Department of Interior began disapproving contracts executed in the form suggested by the Department and failed or refused to advise our attorneys or the Tribe of a form of contract which would be approved. Even a contract which provided for a contingent fee based on usual hourly rates was disapproved by the Secretary.

So we are well aware of the difficulties we may have in the future in obtaining competant counsel to defend our land rights. For while we received recognition through Section 19(b) of ANCSA (43 USC 1618[b]) of our rights to 1,799,927.65 million acres of our land, we do not have recognition from the United States or the State of Alaska of

our rights to the balance of our lands or even an understanding of the legal basis of our rights after the passage of the Alaska Native Claims Settlement Act.

For example, even if the Neets'Ai Gwitch'In Athapaskan Tribe was determined by the United States to be uncivilized in 1867, by 1900 they were, through contact with missionaries, schooling, trade and commerce (Ft. Yukon was established nearby before 1867 by Hudson's Bay Company) civilized and still in the undisturbed ownership, use and occupancy of their lands. Thereby their inchoate rights to fee title to their lands ripened into fee title (under the Treaty of Cession) and cannot be disturbed by Congress (except under a 5th Amendment taking with adequate compensation, which ANCSA did not do or accomplish).

It would be most unfair and contra-

ry to the precepts of civilized behavior and the Constitution of the United States and the Treaty of Cession if Tribes in process of civilization were to be denied the benefits of the Treaty of Cession upon becoming recognized as civilized solely because Congress failed to deal with them and their property after the Treaty of Cession before they were considered civilized. The United States had a duty, as trustee, to protect their land rights, which it attempted to do in the 1884 Organic Act (under the influence of Helen Hunt Jackson and "Ramona"), but that attempt failed because of the unwillingness of white settlers and the U.S. District Court for Alaska to respect the clear meaning of the term "lands now occupied or claimed" by Alaska Natives.

But the Neets'Ai Gwitch'In Tribe

was not in fact disturbed in the possession of their lands before becoming civilized and to this day there are but scattered and occasional intrusions by others, incl ding the United States, upon the lands they use, occupy, and claim, by right of the Constitution, International Law, and the Treaty of Cession, to own in fee simple.

It is in light of these facts that the NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT for the Neets'Ai Gwitch'In Tribe urges this Court to grant certiorari in this case.

II. ARGUMENT: THE REASONS WHY THE NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT FOR THE NEETS'AI GWITCH'IN TRIBE BELIEVES THE PETITION FOR CERTIORARI SHOULD BE GRANTED.

ISSUE NO. 1. The issues, as the Native Village of Venetie Tribal Government understands them, relate to the

right of civilized Alaska Natives to petition the United States government for a redress of grievances for the period from 1966 through December 18, 1971, leading to the enactment of the Alaska Native Claims Settlement Act, P.L. 92-203, 92nd Cong., 1st Sess., December 18, 1971, 85 Stat. 688, 43 USC 1600 et. seq.

FACTS. In 1968, the Athapaskan Villages (Tribes) of Nenana, Minto and Tanacross signed contracts with Barry Jackson and Thomas E. Fenton to represent them in the protection of their lands and culture, upon a contingent fee basis. Payment was to be made to them out of any recovery of money or land to the Tribes. The contracts provided that they were to be paid an "equitable amount" to be determined by the Secretary of the Interior or some independent

tribunal. The contracts were approved by the authorized representative of the Secretary of the Interior pursuant to 25 USC §81 and 25 CFR 88.1(c).

After they devoted four years of services comprehending some 2,400 hours of effort by them, the Settlement Act was passed by the Congress, and by its Section 22(a) their approved contracts were voided.

REASONS. The Native Village of Venetie Tribal Government believes that this is a direct restraint on its right to counsel and its right to petition the government for a redress of grievances. Assuming the Court of Claims' opinion stands as the law and if it correctly states the law as it then existed, any time a Tribe has wanted or wants to hire a lawyer, the lawyer will well know that even with a Congressionally authorized

and administratively approved contract, the Congress may void the same with impunity, at least in regard to matters involving claims against the United States. We remember well the difficulty Athapaskan Tribes of interior Alaska had over the years in retaining competent counsel on claims issues, which remains to this day as a direct product of the approval process and the apparent plenary power of Congress over such contracts. That would be most hurtful in any Indian Tribe's efforts to secure an advocate whose sole efforts are petitioning the government for a redress of the Tribe's grievances, for there would always be lurking in the advocate's mind, a legitimate concern as to his own status.

The Court below suggested that since the power imposed is not exercised until after the services are expended,

no significant impact on our right to counsel or to petition is experienced. Since in our case, and typical of Indian Tribes generally, we are both impecunious at the time the services are rendered and also barred by regulation (25 CFR 89.24) from paying contemporaneously, the only method of obtaining representation is through the device of contingent fee contracts. Those contracts necessarily must be as secure as a salary or retainer contract or we simply cannot compete in marketplace for competent counsel.

ISSUE NO. 2. The second issue, as the Native Village of Venetie Tribal Government understands it, is whether the Congress has the authority to expropriate the lawyer's services without compensation under the Fifth Amendment and the Tucker Act.

FACTS. Here, lawyers complied with the law, 25 USC §81, by securing Secretarial approval of the lawyer's performance of their duties under the contracts; the Congress voided the contracts and made it a crime to be paid other than through some proceedings before the Chief Commissioner of the Court of Claims; even so, they were paid only a portion of their services at, according to their claims, an inadequate rate and for the balance of their services they were paid nothing at all.

REASONS. It is, for the purposes of this case, inappropriate for us to comment, directly or indirectly on the propriety of the extent of Congress' plenary power under the Indian Commerce Clause. The power, suffice it to say, must be exercised at the very least in good faith, particularly where basic

constitutional rights are at issue. The Congress, in enacting ANCSA, was exercising its powers under that authority and it determined that as part of the settlement, attorney's fees ought to be included therein.

This decision was not at the urging of a single Native group or spokesman. Indeed, the President of the Arctic Slope Native Association, Joe Upickson, spoke in liberal support of the Native lawyer's position in testimony to the Congress (Hearings on HR 3100 etc., Subcomm. on Interior and Insular Affairs, Serial No. 92-10, May 7, 1971, at pg. 299). It is our position that absent a clear and compelling showing by the Congress of attorney misconduct or overreaching, the Indian Commerce Clause ought not to supplant the rights reserved to the people, including Indians,

under the Fifth and First Amendments. There, that purpose may be obtained by preserving Petitioners' right to just compensation for the taking of their property rights under their Federally approved contracts of employment with "Indian Tribes", without doing injury to Congress' power under the Indian Commerce Clause.

Surely, citizens should be able to rely upon a statute of the Congress, 25 USC §81, and upon the approval by the administrative agency, the Secretary of the Interior, having charge of the administration of the Congressionally mandated oversight; and when the value of this service is expropriated by the Congress, an obligation should arise, requiring payment for the value thereof from the United States Treasury. Surely, private property may not be taken for

public use without just compensation.

III. CONCLUSION.

These are important questions which should be addressed by this Court, affecting anyone seeking to petition the government for a redress of grievances, not solely Indian Tribes. Therefore, we ask this Court to grant the petition.

Respectfully submitted,

NEETS'AI GWITCH'IN ATHAPASKAN TRIBE by NATIVE VILLAGE OF [illegible]NETIE TRIBAL GOVERNMENT, Pro Se

By_____

EDWARD FRANK, First Chief